IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5098 OF 2006

Shri Sayyad Musa Allhabaksh Mulla .. Petitioner.
Vs.
Smt.Anwarbi Allhabaksh Mulla
since deceased through LRs & Ors. .. Respondents.

Mr.Bhushan A.Walimbe for the petitioner.
Mr.R.M.Momin for respondent nos.3A, 3B, 7 and 8.

CORAM : D.B.BHOSALE, J.

DATED : 16TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent nos.3A, 3B, 7 and 8.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Momin, learned counsel waives service for respondent nos.3A, 3B, 7 and 8.

3. By order dated 16.6.2006, impugned in the present writ petition, the court below has partly allowed an application filed by the petitioner-plaintiff for amendment under Order 6 Rule 17 of CPC. By way of an amendment the petitioner sought to add the house property bearing City Survey No.1511 admesuring 219 sq. mtrs. also as suit property and that part of the amendment has been

rejected holding that there is no evidence on record to show that the said property is ancestral property. The court has also observed that the petitioner sought to insert the said house property as a suit property only with a view to oust the jurisdiction of the court. I perused the order and other material placed before me. There is no dispute that the aforesaid house property is an ancestral property of the parties and even if it is added as a suit property it would not oust the jurisdiction of the trial Court since the petitioner has claimed only 1/5th share in the suit properties. The suit is for partition. Keeping that in view and considering the overall facts and circumstances of the case, I am satisfied that the aforesaid part of the amendment, which has been rejected by the court below, is necessary for the purpose of determining the real questions in controversy between the parties. Hence I pass the following order:

. The impugned order, insofar as it rejecting the amendment, seeking to add the house property bearing city survey no.1511 as suit property, is set aside. The petitioner is allowed to carry out the amendment within two weeks from the date of receipt of this order. The respondent-defendants shall have a liberty to file an additional written statement, if

they so desire, within four weeks from the date of carrying out the amendment. The trial Court shall endeavour to dispose of the suit as expeditiously as possible and preferrably within a period of eight months from the date of receipt of this order. The parties are directed to co-operate disposal of the suit within the time stipulated by this order.

. Rule is, accordingly, disposed of in the aforesaid terms.

(D.B.Bhosale, J.)